

**Office of the Director of National Intelligence**

**2023 Chief FOIA Officer Report Guidelines**

(March 2022 – March 2023)

**SECTION I: FOIA LEADERSHIP AND APPLYING THE PRESUMPTION OF OPENNESS**

**A. Leadership Support for FOIA**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at least at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at or above this level?

**Response:** Yes.

2. Please provide the name and title of your agency's Chief FOIA Officer.

**Response:** Lora A. Shiao, Chief Operating Officer.

3. What steps has your agency taken to incorporate FOIA into its core mission? For example, has your agency incorporated FOIA milestones into its strategic plan?

**Response:** During her confirmation hearing, the Director of National Intelligence (DNI) has made building trust with the public a top priority, and transparency plays an important part in this. In late 2020, the Office of the Director of National Intelligence's (ODNI) Information Management Office, of which the FOIA group is a part of, was aligned directly under my office, elevating it from its previous position.

**B. Presumption of Openness**

4. The Attorney General's 2022 FOIA Guidelines provides that "agencies should confirm in response letters to FOIA requesters that they have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions." Does your agency provide such confirmation in its response letters?

**Response:** Yes.

5. In some circumstances, agencies may respond to a requester that it can neither confirm nor deny the existence of requested records if acknowledging the existence of records would harm an interested protected by a FOIA exemption. This is commonly referred to as a *Glomar* response. With respect to these responses, please answer the below questions:

- a. In addition to tracking the asserted exemption, does your agency specifically track whether a request involved a *Glomar* response?

**Response:** Yes.

- b. If yes, please provide:

- i. the number of times your agency issued a full or partial *Glomar* response (separate full and partial if possible);  
**Response:** 26 Full Glomar responses.
- ii. the number of times a *Glomar* response was issued by exemption (e.g., Exemption 7(C) – 20 times, Exemption 1 – 5 times).  
**Response:** Exemption 1 – 24 times; Exemption 3 – 19 times.
- c. If your agency does not track the use of *Glomar* responses, what would your agency need to do to track in the future? If possible, please describe the resources and time involved. ODNI tracks.

**Response:** N/A

6. Optional – If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

## **SECTION II: ENSURING FAIR AND EFFECTIVE FOIA ADMINISTRATION**

### **A. FOIA Training**

1. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel.

**Response:** All incoming ODNI personnel (staff and contractors) are briefed on their responsibilities under the FOIA as part of their Entrance on Duty. In addition, all employees hired by the ODNI Information Management Office (IMO) have specific FOIA-related performance standards listed in their employee work objectives. In addition, ODNI FOIA Officers regularly convey FOIA processes to non-FOIA staff to alleviate any confusion when searches and review are sent to those components.

2. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice?

**Response:** Yes.

3. If yes, please provide a brief description of the type of training attended or conducted and the topics covered.

**Response:** All full-time staff officers devoted to processing FOIA requests attended the training conference presented by the American Society of Access Professionals (ASAP). The majority of FOIA staff officers also attended the virtual FOIA training offered by Graduate School USA. All employees with FOIA related duties were encouraged to access the Department of Justice Office of Information Policy (OIP) website to review current FOIA guidance and to take available virtual training. We also conducted numerous in-house training sessions for FOIA personnel.

4. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.

**Response:** 100 percent of all FOIA Officers working full time on FOIA case processing attended the in-house training sessions, 75 percent attended the ASAP's training conference, and 75 percent reported taking the virtual trainings offered by OIP. ODNI does not track if staff with FOIA responsibilities have taken FOIA trainings, IMO encourages all to attend the OIP virtual training sessions.

5. OIP has [directed agencies](#) to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.

**Response:** N/A

6. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff; and if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process?

**Response:** At the Entrance on Duty orientation, all incoming ODNI personnel are briefed on their obligations under the FOIA. In addition, FOIA professionals provide guidance and answer questions when non-FOIA staff are searching for and/or reviewing documents responsive to FOIA requests. Senior leadership has been briefed on FOIA resources, and additional resources and training opportunities are currently under review.

## B. Outreach

7. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration.

**Response:** No, at present, ODNI does not engage in any outreach outside of the standard FOIA request process.

8. As part of the standard request process, do your FOIA professionals proactively contact requesters concerning complex or voluminous requests in an effort to clarify or narrow the scope of the request so requesters can receive responses more quickly? Please describe any such outreach or dialogue, and, if applicable, any specific examples.

**Response:** Yes, ODNI FOIA professionals routinely proactively engage with requesters on FOIA requests. Upon receipt, if a request is identified as being potentially either exceedingly voluminous or potentially unsearchable, ODNI FOIA professionals work together with the requester to clarify and, at times, narrow the scope of the request. This proactive engagement takes many forms—to include email, telephone calls, and postal

mail—depending on the preferred method of the requester. This proactive communication continues as the requests move forward through the process. The ODNI acknowledgement letter includes reference to the likelihood of communication in most complex requests, as often times, a request that seems searchable ultimately results in thousands of potentially false hits. ODNI FOIA professionals continue to connect with requesters over the life of the request to ensure that the documents processed are those most responsive to the requesters needs and ensures that ODNI processes these cases in the most efficient manner possible with the most input from the requester.

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during Fiscal Year 2022 (please provide a total number or an estimate of the number).

**Response:** ODNI estimates 50 times in 2022.

### **C. Other Initiatives**

10. Has your agency evaluated the allocation of agency personnel resources needed to respond to current and anticipated FOIA demands? If so, please describe what changes your agency has or will implement.

**Response:** Yes, ODNI has evaluated the need for additional resources to process FOIA requests and has prioritized the hiring of additional FOIA staff officers. Additionally, ODNI has also been working to improve the internal processes in order to search and review records quicker and more accurately.

11. How does your agency use data or processing metrics to ensure efficient management of your FOIA workload? For example, case management reports, staff processing statistics, etc. In addition, please specifically highlight any data analysis methods or technologies used.

**Response:** ODNI does not use any data analysis in its FOIA workload.

12. Optional – If there are any other initiatives undertaken by your agency to ensure fair and effective FOIA administration, please describe them here.

**Response:** N/A

### **SECTION III: PROACTIVE DISCLOSURES**

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures.

**Response:** All documents provided to requesters in response to a FOIA request are carefully reviewed to determine if it can be added to the ODNI Reading Room and, in almost all instances, are posted to the ODNI FOIA Reading Room. In addition, ODNI proactively reviews, declassifies, and posts a wealth of information to the public. These are identified through several internal nomination processes, processed through the standard interagency review processes, and posted to the ODNI website.

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well.

**Response:** ODNI has proactively declassified and released several records in this past reporting period—to include: nine declassified National Intelligence Council Assessments, Joint Assessments in response to the Foreign Intelligence Surveillance Act, the Annual Statistical Transparency Report Regarding the Intelligence Community’s Use of National Security Surveillance Authorities, Reporting on Unidentified Aerial Phenomena, ODNI policy directives, speeches, interviews, and reports. The full collection of declassified and released proactive disclosures is available at: <https://www.odni.gov/index.php/read-released-records>.

3. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency’s website?

**Response:** No.

4. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**Response:** N/A

5. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office, such as IT or data personnel? If so, describe this interaction.

**Response:** Proactive disclosures are posted on ODNI’s public website through the Office of Public Affairs. In addition, the Civil Liberties, Privacy and Transparency Office is informed of new FOIA requests, to help that office determine areas of high public interest that may benefit from proactive release.

6. Optional – Please describe the best practices used to improve proactive disclosures and any challenges your agency faces in this area.

**Response:** N/A

#### **SECTION IV: STEPS TAKE TO GREATER UTILIZE TECHNOLOGY**

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands?

**Response:** Yes, ODNI has reviewed the FOIA related technological capabilities and has identified resources needed to expand those abilities to better respond to FOIA demands.

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program.

**Response:** None.

3. Does your agency currently use any technology to automate record processing? For example, does your agency use machine learning, predictive coding, technology assisted review or similar tools to conduct searches or make redactions? If so, please describe and, if possible, estimate how much time and financial resources are saved since implementing the technology.

**Response:** ODNI utilizes a discovery tool to conduct targeted email searches. No data is available on how much time and/or financial resources the tool saves the agency.

4. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance?

**Response:** Yes.

5. Did all four of your agency's [quarterly reports](#) for Fiscal Year 2022 appear on FOIA.gov?

**Response:** Yes.

6. If your agency did not successfully post all quarterly reports on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2023.

**Response:** N/A

7. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2021 Annual FOIA Report and, if available, for your agency's Fiscal Year 2022 Annual FOIA Report.

**Response:** <https://www.odni.gov/index.php/download-odni-foia-reports>

8. In February 2019, DOJ and OMB issued joint [Guidance](#) establishing interoperability standards to receive requests from the National FOIA Portal on FOIA.gov. Are all components of your agency in compliance with the guidance?

**Response:** Yes.

9. Optional – Please describe the best practices used in greater utilizing technology and any challenges your agency faces in this area.

**Response:** N/A

## **SECTION V: STEPS TAKEN TO REMOVE BARRIERS TO ACCESS, IMPROVE TIMELINESS IN RESPONDING TO REQUESTS, AND REDUCE BACKLOGS**

### **A. Remove Barriers to Access**

1. Has your agency established alternative means of access to first-party requested records outside of the FOIA process?

**Response:** No.

2. If yes, please provide examples. If no, please indicate why not. Please also indicate if you do not know.

**Response:** ODNI is able to close most first-party requests within 20 days of receipt, utilizing the standard FOIA process.

### **B. Timeliness**

3. For Fiscal Year 2022, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report.

**Response:** Less than 1 business day.

4. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2022 Annual FOIA Report, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

**Response:** N/A

5. Does your agency utilize a separate track for simple requests?

**Response:** Yes.

6. If your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2022?

**Response:** Yes.

7. If not, did the simple track average processing time decrease compared to the previous Fiscal Year?

**Response:** N/A

8. Please provide the percentage of requests processed by your agency in Fiscal Year 2022 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100.

**Response:** 50.3 percent.

9. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?

**Response:** N/A

### **C. Backlogs**

#### **BACKLOGGED REQUESTS**

10. If your agency had a backlog of requests at the close of Fiscal Year 2022, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

**Response:** No.

11. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2022 than it did during Fiscal Year 2021?

**Response:** No.

12. If your agency's request backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming requests
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

**Response:** Three significant shifts occurred in Fiscal Year (FY) 2022, which resulted in the FOIA backlog increase. First, following the transfer of the National Intelligence University to ODNI from DIA in June 2021, DIA transferred almost 70 complex FOIA requests to ODNI in 2022—all of which were over five years old and at varying, often stalled, stages of the review process. This acquisition was exceptionally problematic and has required considerable attention of ODNI FOIA staff, who both fielded multiple concerned inquiries from requesters regarding the status of their cases and had to repeatedly request even the most basic case processing information on these cases. Second, IMO experienced a significant change-over in FOIA officers (including the Chief), which slowed the speed at which cases were closed as the new Chief turned her attention to implementing overdue process changes to ensure the quality and the accuracy of the reviews. Third, the 2021 audit, which achieved an exceptional reduction to the backlog, revealed preexisting challenges in the older, more complex cases which have required additional action to move ahead.

13. If you had a request backlog, please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your agency has no request backlog, please answer with "N/A."

**Response:** 110.4 percent.

## **BACKLOGGED APPEALS**

14. If your agency had a backlog of appeals at the close of Fiscal Year 2022, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2021?

**Response:** No.

15. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2022 than it did during Fiscal Year 2021?

**Response:** No.

16. If your agency's appeal backlog increased during Fiscal Year 2022, please explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

- An increase in the number of incoming appeals
- A loss of staff
- An increase in the complexity of the requests received (if possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase)
- Impact of COVID-19 and workplace and safety precautions
- Any other reasons – please briefly describe or provide examples when possible

**Response:** As previously stated, IMO experienced a significant change-over in FOIA officers, which included the only staff dedicated to work on appeal cases.

17. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2022. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2022 and/or has no appeal backlog, please answer with "N/A."

**Response:** 146.7 percent.

#### **D. Backlog Reduction Plans**

18. In the 2022 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2021 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2022?

**Response:** The ODNI FOIA Backlog is under 1,000.

19. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2022, please explain your agency's plan to reduce this backlog during Fiscal Year 2023.

**Response:** The ODNI FOIA Backlog is under 1,000.

## **E. Reducing the Age of Requests, Appeals, and Consultations**

### **TEN OLDEST REQUESTS**

20. In Fiscal Year 2022, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2021 Annual FOIA Report?

**Response:** No; note, 20 percent of the top ten oldest cases were only recently acquired from DIA.

21. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

**Response:** Two.

22. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests.

**Response:** As part of a larger audit of open FOIA requests, IMO has identified processing steps required to move the oldest cases and has developed a plan to move those forward as quickly as the interagency consultation process allows.

### **TEN OLDEST APPEALS**

23. In Fiscal Year 2022, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2021 Annual FOIA Report?

**Response:** No.

24. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

**Response:** One.

25. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals.

**Response:** In 2022, an audit of all open appeals identified which cases could be prioritized for action, with specific attention paid to the age of the appeal. With that analysis completed, IMO is better positioned to reduce this number in 2023.

### **TEN OLDEST CONSULTATIONS**

26. In Fiscal Year 2022, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report?

**Response:** No, however, this was because ODNI did not have ten consults to close out.

27. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2021 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

**Response:** ODNI closed seven of its eight oldest consultations.

#### **ADDITIONAL INFORMATION REGARDING TEN OLDEST**

28. If your agency did not close its ten oldest pending requests, appeals, or consultations, please explain why and provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2023.

**Response:** ODNI closed 7 of its 8 oldest consultations, and only had 8 total open consults at the end of the fiscal year. Due to staff turnover, including the officers working on appeal cases, we were unable to close out most of our appeals. We are prioritizing appeals during FY 2023 and have already closed many. Likewise, staff turnover, along with the need for multiple other agencies reviews, resulted in closing 2 of the 10 oldest requests. ODNI has prioritized our oldest cases for FY 2023 and has elevated some of the reviews pending with other agencies to the management level.

#### **F. Additional Information about FOIA Processing**

29. Were any requests at your agency the subject of FOIA litigation during the reporting period? If so, please describe the impact on your agency’s overall FOIA request processing and backlog. If possible, please indicate the number and nature of requests subject to litigation, common causes leading to litigation, and any other information to illustrate the impact of litigation on your overall FOIA administration.

**Response:** Yes, FOIA litigations account for a significant percentage of ODNI’s FOIA workload. FOIA litigations at ODNI are mostly initiated for failure to respond shortly after the 20-day deadline has passed. To support the review of these cases, ODNI has a few dedicated FOIA Officers. Given the court mandated production schedules, which in FY 2022 required review of several thousand pages a month, ODNI shifts FOIA officers working on other cases to work on litigation cases in order to meet short term production goals. These shifts have a demonstrable effect on the efficient processing of initial cases.

30. How many requests during Fiscal Year 2022 involved unusual circumstances as defined by the FOIA? (This information is available in your agency’s FY22 raw data).

**Response:** None.